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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RIGOBERTO ARZATE MIRANDA,
12 Petitioner,
13 vs.
14 UNITED STATES OF AMERICA, et al.,
15 Respondents.

Civil No. 11-2002 BEN (WMC)

**ORDER DENYING IN FORMA
PAUPERIS APPLICATION AND
DISMISSING CASE WITHOUT
PREJUDICE AND WITH LEAVE TO
AMEND**


16 On August 29, 2011, Petitioner, a federal prisoner, proceeding pro se, filed a Petition for Writ
17 of Habeas Corpus pursuant to 28 U.S.C. § 2241 together with a motion to proceed in forma pauperis.
18 (See ECF No. 1.) On September 2, 2011, the motion to proceed in forma pauperis was denied, and the
19 case was dismissed without prejudice and with leave to amend, because Petitioner had enough money
20 in his trust account to pay the \$5.00 filing fee. (See ECF No. 3.) Petitioner was instructed that if he
21 wished to proceed with this case, he had until November 7, 2011, to either pay the \$5.00 filing fee or
22 submit adequate proof of his inability to pay the fee. (*Id.*)

23 On September 19, 2011, Petitioner submitted a motion to proceed in forma pauperis in which
24 he explained that he had sent two separate \$5.00 checks to the Court to comply with the Court's
25 September 2, 2011, Order. (See ECF No. 7.) Unfortunately, the Court has learned the funds were routed
26 to Petitioner's criminal case (*United States v. Miranda*, 07-CR-0556 DMS) and returned to him because
27 that case is closed.
28

1 Because it appears Petitioner can still afford the filing fee¹ and has not paid the \$5.00 filing fee,
2 the Court has no choice but to again **DENY** the motion to proceed in forma pauperis and **DISMISS** the
3 case without prejudice and with leave to amend. In order to proceed with this case, Petitioner must, **no**
4 **later than January 9, 2012**, pay the \$5.00 filing fee. *Petitioner is advised to reference this case*
5 *number when he submits the filing fee.*

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7 **IT IS SO ORDERED.**

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9 DATED: November 25, 2011


HON. ROGER T. BENITEZ
United States District Court Judge

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¹ In support of his motion, Petitioner has submitted proof of payment of the \$5.00 filing fee, which includes a trust account statement reflecting a balance of \$43.12.